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Attorneys for Plaintiff MACKENZIE ANNE

THOMA, an individual and on behalf of all

others similarly situated,

IN THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

MACKENZIE ANNE THOMA, a.k.a.
KENZIE ANNE, an individual and on behalf
of all others similarly situated,

Plaintiff,

v.

VXN GROUP LLC, a Delaware limited
liability company; STRIKE 3 HOLDINGS,
LLC, a Delaware limited liability company;
GENERAL MEDIA SYSTEMS, LLC, a
Delaware limited liability company; MIKE
MILLER, an individual; and DOES 1
through 100, inclusive,

Defendants.

Case No.: 2:23-cv-04901-WLH (AGRx)

[Assigned to the Hon. Alicia Rosenberg]

**INFORMAL DISCOVERY
CONFERENCE RE RYAN MURPHY
DEPOSITION**

1 Pursuant to the Rules and Procedures of the Honorable Alicia Rosenberg, this
2 Joint Statement is being submitted by counsel for Plaintiff Mackenzie Anne Thoma
3 (“Plaintiff”), an individual and on behalf of all others similarly situated, and counsel
4 for Defendants VXN GROUP, LLC and MIKE MILLER (“Defendants”) (hereby
5 referred to collectively as “the Parties”).

6 **I. Areas of Disagreement**

- 7 (i) Since the parties cannot agree on the statement of the first issue –
8 Plaintiff’s counsel and Defendants’ counsel will state their positions
9 separately:

10 **Plaintiff’s Position**

11 The timing of Ryan Murphy’s (“Murphy”) supplemental responses per
12 the Magistrate Judge’s June 11, 2024 Order regarding the document
13 requests propounded on Murphy to ensure that Murphy has produced
14 all documents within his possession custody and control.

15 **Defendants Position**

16 How to remedy the failure of Ryan Murphy (“Murphy”) and his
17 counsel to comply with the Magistrate Judge’s June 11, 2024 Order to
18 carefully go over the document requests with Murphy to ensure that
19 Murphy has produced all documents within his possession custody and
20 control, including supplementation of his responses, if necessary by
21 June 18, 2024.

- 22 (ii) Defendants served a subpoena for deposition testimony on Ryan
23 Murphy, who is Plaintiff’s former booking agent. The subpoena set the
24 deposition to take place on June 28, 2024 at 10:00 A.M. at Veritext Legal
25 Solutions, 3800 Howard Hughes Pkwy., Ste.700, Las Vegas, NV 89169.
26 The Parties disagree as to:

- 27 a. the timing and location of the deposition;
28 b. whether Defendants’ representative may appear at the deposition;

- 1 c. whether the purported telephonic death threats to Murphy are an
2 appropriate topic of discovery via oral deposition and document
3 requests, including telephonic records (redacting all other calls);
4 d. whether a court order setting the deposition and an extension of the
5 Phase I discovery period is appropriate.

6 **PLAINTIFF'S POSITION**

7 On May 24, 2024, Defendants purportedly served Ryan Murphy with a
8 deposition subpoena commanding that Mr. Murphy appear for his deposition on June
9 28, 2024 at 10:00 A.M. at Veritext Legal Solutions, 3800 Howard Hughes Pkwy.,
10 Ste.700, Las Vegas, NV 89169.

11 On or about June 24, 2024, Mr. Murphy informed Plaintiff's counsel that
12 representatives of Defendants made death threats to him and expressed that he is in
13 fear for his safety. On June 24, 2024, Plaintiff emailed Defendants in order to meet
14 and confer as to the deposition timing and location. Plaintiff informed Defendants of
15 the safety concern and requested that the deposition is conducted remotely and
16 requested confirmation that only counsel for Defendants would be present at the
17 deposition so as to avoid further intimidation of Mr. Murphy.

18 Plaintiff's counsel also informed Defendants that neither Plaintiff's counsel nor
19 Mr. Murphy are available on June 28, 2024 and informed Defendants that alternative
20 dates in the first half of July 2024 would be provided. Defendants refused to agree to
21 conduct the deposition remotely on an alternative date in the first half of July 2024.

22 On June 28, 2024 the Parties engaged in a telephonic meet and confer but were
23 unable to come to an agreement as to the deposition location or deposition date.
24 Despite Plaintiff providing Defendants with specific details as to the death threats,
25 Defendants insist that the deposition is conducted in person. However, this does not
26 resolve safety concerns even if the deposition is conducted at a federal courthouse.

27 Furthermore, Plaintiff is unable to provide alternative dates for the deposition
28 until the location of the deposition is decided, namely because Plaintiff's counsel and

1 Mr. Murphy may need to make travel arrangements if the deposition is to be
2 conducted in person.

3 Defendants raised concerns that they will be prejudiced as Phase 1 discovery is
4 only open for six (6) months. However, the Parties tentatively agreed to consider
5 stipulating to an extension to the Phase 1 timeframe. Thus, there is no prejudice to
6 Defendants if the deposition is conducted remotely on a later date.

7 **DEFENDANTS' POSITION**

8 On May 9, 2024, Murphy purportedly received telephonic death threats from
9 a VNX employee. On May 27, 2024, Defendants served two subpoenas on Murphy.
10 The first subpoena was for the production of documents. The second subpoena was
11 for Murphy's in-personal appearance on Friday, June 28, 2024 at 10 a.m. in Las
12 Vegas. On June 7, 2024, Plaintiff's counsel served Murphy's objections and
13 responses to the subpoena for production of documents asserting that Murphy did
14 not have any responsive documents.

15 At the June 11, 2024 Informal Discovery Conference, Defendants identified
16 Plaintiff counsel's May 29, 2024 letter to Murphy as a responsive document in
17 Murphy's possession, custody or control. As a result, the Magistrate Judge required
18 BLF to "very carefully" go over each request with Murphy to make sure he
19 understood his obligation to provide all responsive documents in his possession,
20 custody or control and supplement his responses by June 18, 2024.

21 On June 11, 2024, Magistrate Judge ordered:

22 *The court will require counsel to confer regarding Mr. Murphy's objections*
23 *and responses to the subpoena. Counsel for Mr. Murphy is urged to go over*
24 *possession, custody or control over sources of electronic documents that may*
25 *be responsive to the subpoena. It appears to the court that Plaintiff's objections*
26 *to Document Request Nos. 15-17 in the subpoena to Mr. Murphy may have*
27 *become moot if Mr. Murphy no longer has access to his former employer's*
28 *Mainboard or other booking accounts. If not, however, counsel should confer*
whether Plaintiff's objections can be addressed in the briefing and hearing
schedule set below for the subpoena to Mainboard in order to avoid duplicate
briefing.

[Dkt. 74 at 2] (emphasis added.)

1 Counsel shall confer by June 18, 2024 regarding Mr. Murphy's
2 objections and responses to the subpoena served upon him. If the parties
3 do not resolve their discovery disputes, counsel may request a discovery
4 conference with the court by contacting the Courtroom Clerk, Karl
Lozada.

5 [Dkt.74 at 4]

6 To date, Plaintiff's counsel failed to supplement Murphy's responses or provide
7 further any information to Defendants.

8 On Monday, June 24, 2024 at 5:55 p.m., Plaintiff's counsel represented for
9 the *first* time that Murphy received death threats from a VXN representative and that
10 deposition needed to be rescheduled due to the purported death and scheduling
11 conflicts. Despite Defendants counsel making themselves available until midnight
12 and after 6:00 a.m. on every day prior to Murphy's deposition date, Plaintiff's
13 counsel was not available to meet and confer until Friday, June 28, 2024 at 1 p.m.,
14 i.e., three hours after the scheduled start time of the deposition.

15 At the June 28, 2024 Meet and Confer, when Defendants asked about
16 Murphy's failure to comply with the June 11, 2024 Order, Plaintiff's counsel
17 explained that it was "difficult to speak with Murphy when he had also access to his
18 computer", since he is an Uber driver. Nevertheless, Murphy's counsel represented
19 that she would try to address this Court's June 11, 2024 Order by Friday, July 5,
20 2024, but could not guarantee it.

21 Next, Plaintiff's counsel represented that the purported death threats were
22 made telephonically by a VXN employee *in early May* 2024 (around the time
23 Motley Models filed a Notice of Appeal from an adverse Labor Commissioner
24 decision in favor of Nicole Doshi). However, Murphy's counsel refused to identify
25 the purportedly responsible VXN employee or answer whether a police report or
26 restraining order was filed.

27 While Plaintiff's counsel takes the position that any inquiry into the purported
28 death threats is "irrelevant," Defendants maintain that given the purported death

1 threats an in-person deposition is critical to prevent interference with Murphy's
2 testimony. Further, documents and information regarding the death threats are
3 highly probative as to Murphy's credibility and whether he was intimidated into
4 altering his testimony. Finally, if a VXN employee presents a serious danger to
5 other employees and contractors, VXN must be permitted to take immediate action
6 to ensure a safe workplace.

7 Thus, Defendants request a court order addressing: (i) Murphy's failure to
8 comply with the June 11, 2024; and (ii) setting the date, time, location, permissible
9 party attendees for Murphy's deposition, whether Defendants can conduct discovery
10 relating to the purported death threats, both orally and a subpoena for the production
11 of documents, and a compensatory extension of the existing four-month Phase I
12 discovery period. Finally, the Defendants also request help setting parameters for
13 future meet and confer situations, where a party asserts it is completely unavailable
14 for multiple days and impede the timely bringing of issues before the Magistrate
15 Judge.

16 Dated: July 2, 2024

BIBIYAN LAW GROUP, P.C.

17
18 By: /s/ Sarah H. Cohen
19 DAVID D. BIBIYAN
20 JEFFREY D. KLEIN
21 SARAH H. COHEN
Attorneys for Plaintiff

22 Dated: July 2, 2024

23
24 By: /s/ Brad Kane
25 BRAD KANE
26 TREY BROWN
27 Attorneys for Defendant
28

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1460 Westwood Boulevard, Los Angeles, California 90024.

On July 2, 2024, and pursuant to the California Code of Civil Procedure section 1010.6, I caused a true and correct copy of the foregoing document(s) described as **INFORMAL DISCOVERY CONFERENCE RE RYAN MURPHY DEPOSITION** to be served by electronic transmission to the below referenced electronic e-mail address as follows:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 2, 2024 at Los Angeles, California.

/s/ Aaron Quirarte
Aaron Quirarte